



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 10 2002

OFFICE OF
WATER

MEMORANDUM

SUBJECT: Designation of Aquatic Resources of National Importance Under Clean Water Act
Section 404(q) Memorandum of Agreement with the Army Corps of Engineers

FROM: G. Tracy Mehan, III
Assistant Administrator

A handwritten signature in black ink, appearing to read "G. Tracy Mehan, III".

TO: Regional Administrators
Regions I-X

In response to recent inquiries on the designation of aquatic resources of national importance (ARNI) for purposes of elevating permit decisions under Section 404 of the Clean Water Act (CWA), Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act, I am writing today to highlight the relevant provision of our 1992 CWA Section 404(q) Memorandum of Agreement (MOA) with the Department of Army establishing the criteria for ARNI.

The 1992 MOA established policies and procedures to implement Section 404(q) of the CWA to "minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the issuance of permits." This MOA, which superseded a previous Section 404(q) MOA, was the product of discussions in 1992 among EPA, the Department of the Army, Fish and Wildlife Service, National Marine Fisheries Service and the Domestic Policy Council.

Pursuant to Part IV, paragraph 1 of the MOA, regarding elevating decisions of specific individual permit cases, these cases must be limited to those matters that involve ARNI. Cases that do not meet this resource threshold may not be elevated under the MOA. According to the MOA, cases that would meet the resource threshold would be those cases that would cause resource damages similar in magnitude to cases evaluated under Section 404(c) of the CWA. Elaboration on potential resources of concern under Section 404(c) can be found in our regulations at 40 CFR 230 and 231.

I am confident that we can continue to protect the Nation's aquatic resources and to ensure that unnecessary delays and paperwork are avoided with the continued appropriate use of the 1992 CWA Section 404(q) MOA. I believe that the record shows that EPA has been effective and judicious in its use of the Section 404(q) process. I look forward to working with you and our partners in protecting our Nation's wetlands and other aquatic resources. Please feel free to contact me or have your staff contact Clay Miller at (202) 260-6464, if you have any questions regarding Section 404(q) or the procedures of the MOA.